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issues a written decision, it shall be filed simultaneously with the Commission and the parties. Once the Judge's order is transmitted to the Executive Secretary, § 2200.90(b) applies, with the exception of the 21 day period provided for in rule § 2200.90(b)(2).

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 40934, July 31, 1997]

§ 2200.210 Review of Judge's decision.

Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After the issuance of the Judge's written decision or order, the parties may pursue the case following the rules in subpart F.

§ 2200.211 Applicability of subparts A through G.

The provisions of subpart D (except for § 2200.57) and §§ 2200.34, 2200.37(d)(5), 2200.38, 2200.71, 2200.73 and 2200.74 will not apply to Simplified Proceedings. All other rules contained in Subparts A through G of the Commission's rules of procedure will apply when consistent with the rules in this subpart governing Simplified Proceedings.

[60 FR 41809, Aug. 14, 1995, as amended at 70 FR 22792, May 3, 2005]

PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

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APPENDIX A TO PART 2201—SCHEDULE OF FEES

AUTHORITY: 29 U.S.C. 661(g); 5 U.S.C. 552; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

SOURCE: 71 FR 56350, Sept. 27, 2006, unless otherwise noted.

§ 2201.1 Purpose and scope.

This part prescribes procedures to obtain information and records of the Oc-

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cupational Safety and Health Review Commission (OSHRC or Commission) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. It applies only to records or information of the Commission or in the Commission's custody. This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's Rules of Procedure in 29 CFR part 2200, subpart D.

§ 2201.2 Description of agency.

OSHRC adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678. The Commission decides cases after the parties are given an opportunity for a hearing. All hearings are open to the public and are conducted at a place convenient to the parties by an Administrative Law Judge. Any Commissioner may direct that a decision of a Judge be reviewed by the full Commission. The President designates one of the Commissioners as Chairman, who is responsible on behalf of the Commission for the administrative operations of the Commission.

§ 2201.3 Delegation of authority and responsibilities.

(a) The Chairman delegates to the Chief FOIA Officer the authority to act upon all requests for agency records.

(b) The Chief FOIA Officer shall designate the FOIA Disclosure Officer(s), who shall be responsible for processing FOIA requests.

(c) The Chief FOIA Officer shall designate the FOIA Public Liaison(s), who shall serve as the supervisory official(s) to whom a FOIA requester can raise concerns about the service the FOIA requester has received following an initial response.

(d) OSHRC establishes a FOIA Requester Service Center that shall be staffed by the FOIA Disclosure Officer(s) and FOIA Public Liaison(s). The address and telephone number of the FOIA Requester Service Center is 1120 20th Street, NW., Room 941, Washington, DC 20036–3457, (202) 606–5700.

§ 2201.4 General policy and definitions.

(a) *Non-exempt records available to public.* Except for records and information exempted from disclosure by 5 U.S.C. 552(b) or published in the FEDERAL REGISTER under 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them in accordance with § 2201.5(a). Records include any information that would be a record subject to the requirements of 5 U.S.C. 552 when maintained by the Commission in any format, including electronic format. In response to FOIA requests, the Commission will search for records manually or by automated means, except when an automated search would significantly interfere with the operation of the Commission's automated information system.

(b) *Examination of records in cases appealed to courts.* A final order of the Commission may be appealed to a United States Court of Appeals. When this occurs, the Commission may send part or all of the official case file to the court and may retain other parts of the file. Thus, a document in a case may not be available from the Commission but only from the court of appeals. In such a case, the FOIA Disclosure Officer may inform the requester that the request for a particular document should be directed to the court.

(c) *Record availability at the OSHRC on-site FOIA Reading Room.* The records of Commission activities are publicly available for inspection and copying at the OSHRC on-site FOIA Reading Room, 1120 20th St., NW., Ninth Floor, Washington, DC 20036-3457. These records include:

(1) Final decisions including concurring and dissenting opinions as well as orders issued as a result of adjudication of cases;

(2) OSHRC Rules of Procedure and Guides to those procedures;

(3) Specific agency policy statements adopted by OSHRC and not published in the FEDERAL REGISTER;

(4) Administrative staff manuals that affect a member of the public;

(5) Copies of records that have been released to a person under the FOIA that, because of the subject matter, the Commission determines that the

records have become or are likely to become the subject of subsequent requests for substantially the same records; and

(6) A general index of records referred to under paragraph (c)(5) of this section.

(d) *Record availability at the OSHRC e-FOIA Reading Room.* Materials created on or after November 1, 1996 under paragraphs (c)(1), (2), (3), (4), (5) and (6) of this section may also be accessed electronically through the Commission's Web site at <http://www.oshrc.gov>.

(e) *Definitions.* For purposes of this part:

Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. The FOIA Disclosure Officer shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the FOIA Disclosure Officer has reasonable cause to doubt a requester's stated use, the FOIA Disclosure Officer shall provide the requester a reasonable opportunity to submit further clarification.

Direct costs means those expenses that the Commission actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

Duplication means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. The FOIA Disclosure Officer

shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

Educational institution means a pre-school, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

Noncommercial scientific institution means an institution that is not operated on a "commercial" basis, as that term is defined in this paragraph, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

Representative of the news media, or news media requester is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. For purposes of this definition, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but the FOIA Disclosure Officer shall also look

to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

Review means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The FOIA Disclosure Officer shall ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, the FOIA Disclosure Officer shall not search line-by-line where duplicating an entire document would be quicker and less expensive.

Working day means a regular Federal working day. It does not include Saturdays, Sundays, or Federal legal public holidays.

§ 2201.5 Procedure for requesting records.

(a) *Requests for information.* All requests for information must be made in writing and must be mailed or delivered to the FOIA Disclosure Officer at the address in § 2201.3(d). The words "Freedom of Information Act Request" must be printed on the face of the request's envelope or covering as well as the request itself. Requests for information must describe the particular record requested to the fullest extent possible and specify the preferred form or format (including electronic formats) of the response. The Commission

shall accommodate requesters as to form or format if the record is readily reproducible in the requested form or format. When requesters do not specify the preferred form or format of the response, the Commission shall respond in the form or format in which the record is most accessible to the Commission.

(b) *Date of receipt.* A request that complies with paragraph (a) of this section is deemed received on the actual date it is received by the Commission. A request that does not comply with paragraph (a) of this section is deemed received when it is actually received by the FOIA Disclosure Officer. For requests that are expected to result in fees exceeding \$250, the request shall not be deemed to have been received until the requester is advised of the anticipated costs and the Commission has received full payment or satisfactory assurance of full payment as provided under § 2201.7(f).

§ 2201.6 Responses to requests.

(a) *Responses within 20 working days.* The FOIA Disclosure Officer will either grant or deny a request for records within 20 working days after receiving the request.

(b) *Extensions of response time in unusual circumstances.* In unusual circumstances, the Commission may extend the time limit prescribed in paragraph (a) of this section by not more than 10 working days. The FOIA Disclosure Officer shall notify the requester in writing of the extension, the reasons for the extension and the date on which a determination is expected. “Unusual circumstances” exists, but only to the extent reasonably necessary to the proper processing of the particular request, when there is a need to:

(1) Search for and collect the requested records from one of OSHRC’s regional offices or off-site storage facilities;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(3) Consult, with all practicable speed, with another agency having a substantial interest in the determination of the request.

(c) *Additional extension.* The FOIA Disclosure Officer shall notify the requester in writing when it appears that a request cannot be completed within the allowable time (20 working days plus a 10 working day extension). In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing.

(d) *Two-track processing.* To ensure the most equitable treatment possible for all requesters, the Commission will process requests on a first-in, first-out basis using a two-track processing system based upon the estimated time it will take to process the request.

(1) The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.

(2) The second track is for requests involving “unusual circumstances” that are expected to take between 21 to 30 working days to complete and those that, because of their unusual volume or other complexity, are expected to take more than 30 working days to complete.

(3) Requesters should assume, unless otherwise notified by the Commission, that their request is in the first track. The Commission will notify requesters when their request is placed in the second track for processing and that notification will include the estimated time for completion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified in writing. In the case of a request expected to take more than 30 working days for action, a requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to requesters as documents are obtained by the FOIA Disclosure Officer from the supplying offices.

(e) *Expedited processing.* (1) The Commission may place a person’s request at the front of the queue for the appropriate track for that request upon receipt of a written request that clearly demonstrates a compelling need for expedited processing. Requesters must

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provide detailed explanations to support their expedited requests. For purposes of determining expedited processing, the term *compelling need* means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of any individual; or

(ii) That a request is made by a person primarily engaged in disseminating information, and that person establishes that there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief. The certification requirement may be waived by the Commission as a matter of agency discretion.

(3) The FOIA Disclosure Officer will make the initial determination whether to grant or deny a request for expedited processing and will notify a requester within 10 calendar days after receiving the request whether processing will be expedited.

(f) *Content of denial.* When the FOIA Disclosure Officer denies a request for records, either in whole or in part, a request for expedited processing, and/or a request for fee waivers (see § 2201.8), the written notice of the denial shall state the reason for denial, give a reasonable estimate of the volume of matter denied (unless doing so would harm an interest protected by the exemption(s) under which the request was denied), set forth the name and title or position of the person responsible for the denial of the request, and notify the requester of the right to appeal the determination as specified in § 2201.9. A refusal by the FOIA Disclosure Officer to process the request because the requester has not made advance payment or given a satisfactory assurance of full payment required under § 2201.7(f) may be treated as a denial of the request and appealed under § 2201.9.

(g) *Deletions.* The FOIA Disclosure Officer shall provide to the requester in writing a justification for deletions within records. The amount of information deleted from records shall be indicated on the released portion of the

record, unless including that indication would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the place in the record where the deletion is made shall be marked.

§ 2201.7 Fees for copying, searching, and review.

(a) *Fees required unless waived.* The FOIA Disclosure Officer shall charge the fees in paragraph (b) of this section unless the fees for a request are less than the threshold amount as provided in OSHRC's fee schedule, in which case no fees shall be charged. See Appendix A. The FOIA Disclosure Officer shall, however, waive the fees in the circumstances stated in § 2201.8.

(b) *Calculation of fees.* Fees for copying, searching and reviewing will be based on the direct costs of these services, including the average hourly salary (base plus DC locality payment), plus 16 percent for benefits, of the following three categories of employees involved in responding to FOIA requests: clerical—based on an average of all employees at GS-9 and below; professional—based on an average of all employees at GS-10 through GS-14; and managerial—based on an average of all employees at GS-15 and above. OSHRC will calculate a schedule of fees based on these direct costs. The schedule of fees under this section appears in Appendix A to this part 2201. A copy of the schedule of fees may also be obtained at no charge from the FOIA Disclosure Officer. See § 2201.3(d).

(1) *Copying fee.* The fee per copy of each page shall be calculated in accordance with the per-page amount established in OSHRC's fee schedule. See Appendix A. For other forms of duplication, direct costs of producing the copy, including operator time, shall be calculated and assessed. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use.

(2) *Search fee.* Search fees shall be calculated in accordance with the amounts established in OSHRC's fee schedule. See Appendix A. Commercial requesters shall be charged for all search time. Search fees shall be

charged even if the responsive documents are not located or if they are located but withheld on the basis of an exemption. However, search fees shall be limited or not charged as follows:

(i) *Easily identifiable decisions.* Search fees shall not be charged for searching for decisions that the requester identifies by name and date, or by docket number, or that are otherwise easily identifiable.

(ii) *Educational, scientific or news media requests.* No fee shall be charged if the request is not for a commercial use and is by an educational or scientific institution, whose purpose is scholarly or scientific research, or by a representative of the news media.

(iii) *Other non-commercial requests.* No fee shall be charged for the first two hours of searching if the request is not for a commercial use and is not by an educational or scientific institution, or a representative of the news media.

(iv) *Requests for records about self.* No fee shall be charged to search for records filed in the Commission's systems of records if the requester is the subject of the requested records. See the Privacy Act of 1974, 5 U.S.C. 552a(f)(5) (fees to be charged only for copying).

(3) *Review fee.* A review fee shall be charged only for commercial requests. Review fees shall be calculated in accordance with the amounts established in OSHRC's schedule of fees. See Appendix A. A review fee shall be charged for the initial examination of documents located in response to a request to determine if it may be withheld from disclosure, and for the excision of withholdable portions. However, a review fee shall not be charged for review by the Chairman under § 2201.9 (Appeal of denials).

(c) *Invoices.* The FOIA Disclosure Officer shall provide the requester with an invoice containing an itemization of assessed fees.

(d) *Aggregation of requests.* When the FOIA Disclosure Officer reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the FOIA Disclosure Officer may aggregate any such requests and charge accordingly.

(e) *Fees likely to exceed \$25.* If the total fee charges are likely to exceed \$25, the FOIA Disclosure Officer shall notify the requester of the estimated amount of the charges. The notification shall offer the requester an opportunity to confer with the FOIA Disclosure Officer to reformulate the request to meet the requester's needs at a lower cost.

(f) *Advance payments.* Advance payment of fees will generally not be required. If, however, charges are likely to exceed \$250, the FOIA Disclosure Officer shall notify the requester of the likely cost and: if the requester has a history of prompt payment of FOIA charges, obtain satisfactory assurance of full payment; or if the requester has no history of payment, require an advance payment of an amount up to the full estimated charge. If the requester has previously failed to pay a fee within 30 days of the date of billing, the FOIA Disclosure Officer shall require the requester to pay the full amount owed plus any interest owed as provided in paragraph (h) of this section or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated charges before the FOIA Disclosure Officer begins to process the new request or a pending request from that requester.

(g) *Fees for services not required by the Freedom of Information Act.* The Commission has discretion regarding its response to requests for services not required by the FOIA. For example, the FOIA does not require agencies to certify or authenticate responsive documents, nor does it require responsive documents to be sent by express mail. If these services are requested, the FOIA Disclosure Officer shall assess the direct costs of such services.

(h) *Interest on unpaid bills.* The Commission's Office of Administration shall begin assessing interest charges on unpaid bills starting on the thirty-first day after the date the bill was sent. Interest will accrue from the date of billing until the Commission receives full payment. Interest will be at the rate described in 31 U.S.C. 3717.

(i) *Debt collection procedures.* If bills are unpaid 60 days after the mailing of a written notice to the requester, the

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Commission's Office of Administration may resort to the debt collection procedures set out in the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

§ 2201.8 Waiver of fees.

(a) *General.* The FOIA Disclosure Officer shall waive part or all of the fees assessed under § 2201.7(b) if two conditions are satisfied: Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. Where the FOIA Disclosure Officer has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the FOIA Disclosure Officer may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes. The FOIA Disclosure Officer shall afford the requester the opportunity to show that the requester comes within these two conditions. The following factors may be considered in determining whether the two conditions are satisfied:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) *Partial waiver of fees.* If the two conditions stated in paragraph (a) of this section are met, the FOIA Disclosure Officer will ordinarily waive all fees. In exceptional cases, however, only a partial waiver may be granted if the request for records would impose

an exceptional burden or require an exceptional expenditure of Commission resources, and the request for a waiver minimally satisfies the "public interest" requirement in paragraph (a) of this section.

§ 2201.9 Appeal of denials.

A denial of a request for records, either in whole or in part, a request for expedited processing, or a request for fee waivers, may be appealed in writing to the Chairman of the Commission within 20 working days of the date of the letter denying an initial request. The Chairman shall act on the appeal under 5 U.S.C. 552(a)(6)(A)(ii) within 20 working days after the receipt of the appeal. If the Chairman wholly or partially upholds the denial of the request, the Chairman shall notify the requesting person that the requester may obtain judicial review of the Chairman's action under 5 U.S.C. 552(a)(4)(B)–(G).

§ 2201.10 Maintenance of statistics.

(a) The FOIA Disclosure Officer shall maintain records of:

(1) The number of determinations made by the agency not to comply with the requests for records made to the agency and the reasons for those determinations;

(2) The number of appeals made by persons, the results of those appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) A complete list of all statutes that the agency used to authorize the withholding of information under 5 U.S.C. 552(b)(3), which exempts information that is specifically exempted from disclosure by other statutes;

(4) A description of whether a court has upheld the decision of the agency to withhold information under each of those statutes cited, and a concise description of the scope of any information upheld;

(5) The number of requests for records pending before the agency as of September 30 of the preceding year and the median number of days that these requests had been pending before the agency as of that date;

(6) The number of requests for records received by the agency and the

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number of requests the agency processed;

(7) The median number of days taken by the agency to process different types of requests;

(8) The total amount of fees collected by the agency for processing requests;

(9) The average amount of time that the agency estimates as necessary, based on the past experience of the agency, to comply with different types of requests;

(10) The number of full-time staff of the agency devoted to the processing of requests for records under this section; and

(11) The total amount expended by the agency for processing these requests.

(b) The FOIA Disclosure Officer shall annually, on or before February 1 of each year, prepare and submit to the Attorney General an annual report covering each of the categories of records to be maintained in accordance with paragraph (a) of this section, for the previous fiscal year. A copy of the report will be available for public inspection and copying at the OSHRC FOIA Reading Room, and a copy will be accessible through OSHRC's Web site at <http://www.oshrc.gov>.

APPENDIX A TO PART 2201—SCHEDULE OF FEES

Type of fee	Amount of fee
Threshold Amount (Amount below which fees will not be assessed)	\$10
Search and Review Hourly Fees:	
Clerical (GS-9 and below)	23
Professional (GS-10 through GS 14)	46
Managerial (GS-15 and above)	76
Duplication cost per page	0.25
Computer printout copying fee	0.40
Searches of computerized records	Actual cost to the Commission, but shall not exceed \$300 per hour, including machine time and the cost of the operator and clerical personnel.
Certification Fee	\$35 per authenticating affidavit or declaration. (Note: Search and review charges may be assessed in accordance with the rates listed above.)